

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2363 OF 2006

Purshottam J. Deshpande & Anr. Petitioners
V/s.
Sangli Urban Co-op.Bank Ltd. Respondent

Mr.G.N. Salunke for the Petitioners.
Mr.N.V. Walawalkar, Senior Counsel with Mr.G.H.
Keluskar for Respondent No.1.

CORAM : R.M. SAVANT, J.
DATED : 5TH JUNE, 2007.

P.C. :

1. Rule. Rule with the consent of the parties made returnable forthwith and heard.

2. By this Petition filed under Article 227 of the Constitution of India, the Petitioner impugns the order dated 24.1.2006 passed in Misc. Application No.1 of 2006 by which order delay in filing the Appeal before the Co-operative Appellate Court has been rejected.

3. Such of the facts which are necessary to be cited are stated thus :-

. Respondent No.1 herein filed a dispute under

Section 91 of the Maharashtra Co-operative Societies Act, 1960 (for brevity's sake "the said Act") for recovery of the loan taken by Respondent No.2, who is the main borrower. The Petitioners are the guarantors. The said dispute was numbered as Co-operative Case No.219 of 1999. The Petitioners could not participate in the said proceedings on account of reasons beyond their control, as they could not get leave. The Petitioners are the employees of Respondent No.1 - Bank. The Petitioners got knowledge of the award some time in December, 2005 when Respondent No.1 sought to make deductions from their salaries. It is also the case of the Petitioners that Respondent No.1 has not proceeded against the main borrower.

4. The delay condonation was sought on the ground that the Petitioners got knowledge of the award only after the deductions were sought to be made from their salaries in December, 2005. The Petitioners being the guarantors were under the bona-fide impression that the recovery would be made from the main borrower. In the said circumstances, the delay has been occasioned.

5. I have heard the learned counsel for the

respective parties. Mr.Walawalkar, the learned Senior Counsel appearing on behalf of Respondent No.1 states that no sufficient caused has been shown by the Petitioners.

6. In my view the explanation that the Petitioners became aware of the award only in December, 2005 when deductions were sought to be made from their salaries, appears to be plausible, since the dispute was decided ex-parte the Petitioners deserve an opportunity to prosecute the Appeal filed by them. In that view of the matter the interest of justice would be served if the delay of about four months in filing the Appeal is condoned. However, interest of justice would also require that the Petitioners be directed to pay Rs.1000/- to Respondent No.1 within three weeks from date. The Appeal to be numbered only after the Petitioners produce the proof of having paid the said costs to Respondent No.1. In the event the Petitioners do not pay the said costs, the Petition to stand dismissed.

7. Rule is accordingly made absolute.

. Parties to act on an ordinary copy of this order duly authenticated by the Private Secretary /

Sheristedar of this Court.

(R.M. SAVANT, J)